

IN THE HIGH COURT OF FIJI
AT SUVA

CRIMINAL JURISDICTION

CRIMINAL MISC. CASE NO.: HAM 006 OF 2008

BETWEEN:

THE STATE

Applicant

AND:

MIDLINK MARKETING LIMITED

Respondent

Counsel: Ms. S. Humza for the Applicant
Mr. J. Semisi for the Respondent

Date of Hearing: Friday 7th March, 2008
Date of Ruling: Friday 14th March, 2008

RULING

- [1] On 1 November 2007, the Respondent, after a trial in the Magistrates' Court, was acquitted of the offence of "Failing to give 12 weeks written notice to the Prices and Incomes Board for a proposed increase in rent".
- [2] The State seeks an enlargement of time to appeal the acquittal.
- [3] Section 310(1) of the Criminal Procedure Code provides that an appeal from a decision of the Magistrates' Court must be lodged within 28 days of the date of the decision appeal against. The section gives discretion to the Magistrates' Court or the High Court to enlarge the 28 days period for good cause.

[4] Subsection 2 of section 310 outlines “good cause” to include:

- (a) a case where the legal practitioner engaged by the appellant was not present at the hearing before the magistrates’ court and for that reason requires further time for the preparation of the petition;
- (b) any case in which a question of law of unusual difficulty is involved;
- (c) a case in which the sanction of the Director of Public Prosecutions is required by virtue of section 308;
- (d) the inability of the appellant or his legal practitioner to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefore.

[4] However, the consideration is not limited to “good cause”. The merits of the appeal are a relevant consideration (see, *The State v Ramesh Patel*, Criminal Appeal No. AAU0002 of 2002S).

[5] In *Patel* (supra), despite an excessive and unexplained delay, the State was granted an extension of time to appeal because the appeal had merits.

[6] In the present case, the application for an extension of time was filed on 22 January 2008. By the time this application was filed, the appeal was out of time by 1 month and three weeks. In the supporting affidavit filed by the State, the delay is attributed to late receipt of the docket from Prices and Incomes Board who conducted the prosecution in the lower court. Whilst I accept the delay is justifiable, that in itself does not resolve the issue.

[7] In its application, the State omitted any reference to the proposed grounds of appeal. Without knowing the grounds, it is not possible to assess the merits of the appeal.

[8] The Respondent opposes the application. The Respondent's affidavit which was filed on 28 February 2008, at paragraph 10 states:

"...that I wholly oppose the order of enlargement of time sought since the applicant has failed to disclose to this Honorable Court whether it has any arguable grounds that may have any good prospects of success on Appeal."


[9] Regrettably, the State made no attempt to rectify the defect in its application by either filing an amended affidavit or a further affidavit disclosing the proposed grounds of appeal once they received the Respondent's affidavit. The State only realized the defect in its application during the hearing of the application when the counsel sought an adjournment to file a further affidavit. I refused an adjournment because the State had an ample opportunity to prepare itself for this application.

[10] When an application is made by a litigant, the Court expects the litigant to exercise due diligence and supply all the relevant information pertaining to the application for the Court's consideration.

[11] By failing to disclose the grounds of appeal, the Court was restricted to assess the substance of the appeal which is an important consideration in this application for an enlargement of time to appeal. The application by the State is flawed.

[12] The application is dismissed.




Daniel Goundar
JUDGE

At Suva
Friday 14th March, 2008

Solicitors:

Office of the Director of Public Prosecutions, Suva for the Applicant
Inoke Law, Suva for the Respondent

